



UNITED STATES DEPARTMENT OF COMMERCE  
The Deputy Under Secretary for  
Oceans and Atmosphere  
Washington, D.C. 20230

DEC 10 2002

Honorable Christine Todd Whitman  
Administrator, Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Ms. Whitman:

On July 10, 2001, Barnes Nursery, Inc. (Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the Ohio Department of Natural Resources (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' after-the-fact permit to maintain an excavated channel and berm system intended to store water for agricultural purposes. This project is located in Erie County, Ohio adjacent to East Sandusky Bay.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 C.F.R. § 930.121 or § 930.122.

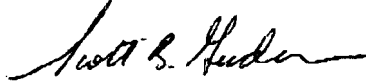
The Appellants request that the Secretary override Ohio's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) the proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively, and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of Ohio's coastal zone management plan.  
See 15 C.F.R. § 930.121.



I have been delegated the responsibility for soliciting comments on the appeal from Federal agencies. I am requesting your views on any of the above elements on which you may wish to comment. So that this appeal may be completed in a timely manner, I respectfully request that you submit your comments within 30 days of receipt of this letter. Please mail the comments to Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Suite 6111, Silver Spring, Maryland 20910.

If you need any additional information in order to comment on this appeal, please contact Ms. Holt at (301) 713-2967, extension 215.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott B. Gudes", with a stylized, flowing script.

Scott B. Gudes



UNITED STATES DEPARTMENT OF COMMERCE  
Office of the Under Secretary for  
Oceans and Atmosphere  
Washington, D.C. 20230

DEC 10 2002

Lieutenant General Robert B. Flowers  
Chief of Engineers  
2600 Army Pentagon  
Washington, D.C. 20310-2600

Dear General Flowers:

On July 10, 2001, Barnes Nursery, Inc. (Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the Ohio Department of Natural Resources (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' after-the-fact permit to maintain an excavated channel and berm system intended to store water for agricultural purposes. This project is located in Erie County, Ohio adjacent to East Sandusky Bay.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 C.F.R. § 930.121 or § 930.122.

The Appellants request that the Secretary override Ohio's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) the proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively, and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of Ohio's coastal zone management plan.  
See 15 C.F.R. § 930.121.



I have been delegated the responsibility for soliciting comments on the appeal from Federal agencies. I am requesting your views on any of the above elements on which you may wish to comment. So that this appeal may be completed in a timely manner, I respectfully request that you submit your comments within 30 days of receipt of this letter. Please mail the comments to Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Suite 6111, Silver Spring, Maryland 20910.

If you need any additional information in order to comment on this appeal, please contact Ms. Holt at (301) 713-2967, extension 215.

Sincerely,



Scott B. Gudes



UNITED STATES DEPARTMENT OF COMMERCE  
The Deputy Under Secretary for  
Oceans and Atmosphere  
Washington, D.C. 20230

DEC 0 2002

Mr. Steven A. Williams  
Director, U.S. Fish and Wildlife Service  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Dear Mr. Williams:

On July 10, 2001, Barnes Nursery, Inc. (Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the Ohio Department of Natural Resources (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' after-the-fact permit to maintain an excavated channel and berm system intended to store water for agricultural purposes. This project is located in Erie County, Ohio adjacent to East Sandusky Bay.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 C.F.R. § 930.121 or § 930.122.

The Appellants request that the Secretary override Ohio's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) the proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively, and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of Ohio's coastal zone management plan.

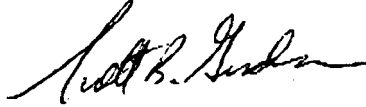
See 15 C.F.R. § 930.121.



I have been delegated the responsibility for soliciting comments on the appeal from Federal agencies. I am requesting your views on any of the above elements on which you may wish to comment. So that this appeal may be completed in a timely manner, I respectfully request that you submit your comments within 30 days of receipt of this letter. Please mail the comments to Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Suite 6111, Silver Spring, Maryland 20910.

If you need any additional information in order to comment on this appeal, please contact Ms. Holt at (301) 713-2967, extension 215.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott B. Gudes", written in a cursive style.

Scott B. Gudes



UNITED STATES DEPARTMENT OF COMMERCE  
The Deputy Under Secretary for  
Oceans and Atmosphere  
Washington, D.C. 20230

DEC 10 2002

Mr. Charles G. Groat  
Director, U.S. Geological Survey  
12201 Sunrise Valley Drive  
Reston, Virginia 20192

Dear Mr. Groat:

On July 10, 2001, Barnes Nursery, Inc. (Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the Ohio Department of Natural Resources (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' after-the-fact permit to maintain an excavated channel and berm system intended to store water for agricultural purposes. This project is located in Erie County, Ohio adjacent to East Sandusky Bay.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 C.F.R. § 930.121 or § 930.122.

The Appellants request that the Secretary override Ohio's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) the proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively, and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of Ohio's coastal zone management plan.

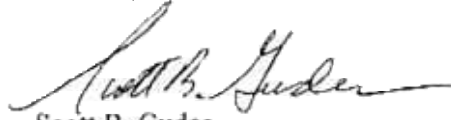
See 15 C.F.R. § 930.121.



I have been delegated the responsibility for soliciting comments on the appeal from Federal agencies. I am requesting your views on any of the above elements on which you may wish to comment. So that this appeal may be completed in a timely manner, I respectfully request that you submit your comments within 30 days of receipt of this letter. Please mail the comments to Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Suite 6111, Silver Spring, Maryland 20910.

If you need any additional information in order to comment on this appeal, please contact Ms. Holt at (301) 713-2967, extension 215.

Sincerely,



Scott B. Gudes

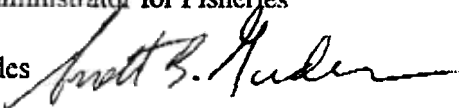




UNITED STATES DEPARTMENT OF COMMERCE  
The Deputy Under Secretary for  
Oceans and Atmosphere  
Washington, D.C. 20230

DEC 0 2002

MEMORANDUM FOR: Dr. William T. Hogarth  
Assistant Administrator for Fisheries

FROM: Scott B. Gudes 

SUBJECT: Department of Commerce Administrative Appeal -- Barnes  
Nursery, Inc.

On July 10, 2001, Barnes Nursery, Inc. (Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the Ohio Department of Natural Resources (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' after-the-fact permit to maintain an excavated channel and berm system intended to store water for agricultural purposes. This project is located in Erie County, Ohio adjacent to East Sandusky Bay.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 C.F.R. § 930.121 or § 930.122.

The Appellants request that the Secretary override Ohio's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) the proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively, and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of Ohio's coastal zone management plan.  
See 15 C.F.R. § 930.121.



I have been delegated the responsibility for soliciting comments on the appeal from Federal agencies. I am requesting your views on any of the above elements on which you may wish to comment. So that this appeal may be completed in a timely manner, I respectfully request that you submit your comments within 30 days of receipt of this letter. Please mail the comments to Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Suite 6111, Silver Spring, Maryland 20910.

If you need any additional information in order to comment on this appeal, please contact Ms. Holt at (301) 713-2967, extension 215.

Sincerely,



Scott B. Gudes